IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 2285 of 2002
with

CIVIL APPLICATION NO. 8404 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PANDYA KIRITBHAI BALUBHAI

Versus

SARTANSINH BHOPALSINH DEVDA

Appearance:

1. First Appeal No. 2285 of 2002

MR GAURANG H BHATT for Appellant

NOTICE SERVED for Respondent No. 1-2,3-5

MR. J.M.BAROT for MR HS MUNSHAW for Respondent No. 3

MR ANAND L SHARMA for Respondent No. 4-5

CORAM : HON'BLE MR.JUSTICE A.M.KAPADIA

Date of decision: 01/12/2004

ORAL JUDGEMENT

By filing instant Appeal under Section 173 of the Motor Vehicles Act, 1989 ('the Act' for short), appellant/original claimant brought under challenge the order dated 5.06.2002, passed below application exhibit-4 in M.A.C.P. No. 1517 of 2000, filed under Section 140 of the Act by the M.A.C.T. (Auxiliary), Sabarkantha District at Himmatnagar, by which application filed by the appellant to recover the interim compensation under Section 140 of the Act came to be allowed only against the Opponent No.5, the alleged owner of the vehicle and thereby awarded Rs.25000 together with interest @ 9% from the date of application till the amount is deposited. So far as the application filed against the opponent Nos. 1, 2, 3 and 4 and others is concerned, it has been dismissed on the ground that the appellant failed to prove that the vehicle in question, i.e. Jeep bearing registration No. GJ 2K 2579 was involved in the accident and also failed to prove that opponent No.2 - Bhikhabhai Amibhai Mansuri is the owner of the said vehicle as well as the said vehicle is insured with the opponent No.3 The Oriental Insurance Company.

2. On 30.03.2000 appellant boarded Jeep No. GUZ 6905 and proceeded from Idar to Himmatnagar. When he was passing through the highway of Sapawada, one Jeep bearing registration No. GJ 2K 2579 driven by opponent No.1, in rash and negligent manner, came from behind it and dashed with Jeep No. GUZ 6905 as a result of which the Jeep in which the appellant was travelling, went off the road and as a result of the same he received injuries. It is alleged that opponent No.1 was in employment of opponent No.2 and at the relevant time opponent no.3 was the Insurance Company and the appellant was travelling in the Jeep driven by opponent No.4 and owned by opponent no.5. It is further alleged that as a result of the said accident, he received multiple injuries and fracture and resultant permanent disability. He, therefore, filed the application under Section 140 of the Act to receive compensation of Rs.25000/-.

3. Learned Presiding Judge of the Tribunal, on appreciaton, evaluation and analysis of the evidence and more particularly considering the FIR, panchnama, injury certificate and Xerox copy of the cover note of Insurance Company, driving license of Driver of the Jeep bearing registration No. GUJ 6906 and RC book, came to the conclusion that the factum of accident is established. However, he has held that the appellant herein has failed to prove that the vehicle bearing registration No. GJ 2K

2579 is involved in the accident and also failed to prove that opponent No.2 Bhikhbhai Amkibhai Mansuri is the owner and also failed to prove that the said Jeep was insured with the Opponent No.3, the Oridntal Insurance Company at the relevant time. Therefore, it was held that opponent Nos. 2 and 3 are not liable to pay interim compensation to the appellant herein. It was also held that the appellant has also failed to prove that the vehicle No. GUZ 6905 is insured with any Insurance Company, therefore, opponent No.5, being the owner of the vehicle, in whose vehicle appellant was travelling, was held liable to pay compensation and resultantly passed the award against opponent No.5, which has given rise to the present appeal at the instance of the appellant/original claimant.

4. During the course of the hearing, it is jointly submitted by Mr. Gaurang Bhatt, learned advocate of the appellant and Mr. J.M.Barot, learned advocate for Mr. H.S.Munshaw, learned advocate of opponent No.3 that the vehicle bearing registration No.GUJ 2K 2579 is insured with opponent No.3, the Oriental Insurance Company. It is also jointly submitted by them that though before the Tribunal cover note of Oriental Insurance Company was produced but it did not bear the registration number, therefore, Tribunal has not passed the award against the Oriental Insurance Company. Infact, the vehicle involved in the accident is insured with the Oriental Insurance Company. They therefore urged that appropriate orders may be passed for deciding the application Exhibit-4 filed under Section 140 of the Act afresh by remanding the matter to the Tribunal where the main claim petition is still pending for final disposal.

5. I have considered the submissions as well as joint request made by the learned advocates appearing for the parties for remanding the matter to the Tribunal and perused the averments made in the application and the original insurance certificate produced by Mr. Barot during the course of his submission for perusal of the Court.

6. So far as the factum of accident is concerned, there is no dispute that on 30.03.2000 the appellant boarded Jeep No. GUZ 6905 and proceeded from Idar to Himmatnagar. When he was passing through the highway of Sapawada, one Jeep bearing registration No. GJ 2K 2579 driven by opponent No.1, in rash and negligent manner, came from behind and dashed it with the Jeep No. GUZ 6905 as a result of which, the Jeep in which the appellant was travelling went off the road and as a

result of the same he received injuries. On perusal of the policy produced by Mr. Barot, learned advocate of opponent No.3, the Oriental Insurance Company, there is no manner of doubt that the vehicle bearing registration no. GJ 2K 2579 was insured with the Oriental Insurance Company at the relevant time, i.e. the date on which the accident had taken place.

In aforesaid view of the matter, this Court is of the view that this matter is required to be remanded to the Tribunal for deciding the application filed under Section 140 of the Act for getting interim compensation of Rs.25,000 afresh by considering the insurance policy of vehicle bearing registration No. GJ 2K 2579, which shall be produced by the opponent No.3 before the Tribunal during the course of the hearing before it.

7. Seen in the above context, order dated 5.6.2002 passed by the Tribunal rejecting the application filed by the appellant for getting interim compensation deserves to be quashed and set aside by allowing this appeal.

8. For the foregoing reasons, the appeal succeeds and is accordingly allowed. Order dated 5.6.2002 passed below application Exhibit 4 in MACP No. 1517 of 2000 filed under Section 140 of the Act by the M.A.C.T. (Auxiliary) Sabarkantha, District Himmatnagar for getting interim compensation is quashed and set aside. The matter is remanded to the Tribunal and the Tribunal is directed to decide the application Exhibit-4 in M.A.C.P. No. 1517 of 2000 filed under Section 140 of the Act, afresh, after considering insurance policy of the vehicle bearing registration No. GJ 2K 2579, within a period of four weeks from the date of receipt of the writ of this Court. There shall be no order as to costs.

9. Since the appeal is allowed, Civil Application No. 8404 of 2002 filed for stay of the impugned order now does not assume any survival value, and hence the same is disposed of accordingly with no order as to costs.

(A.M.Kapadia,J)

Jayanti*